

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000353-001 DT

10/18/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

YVONNE M DAVIS (001)

LESLIE T JONES JR.

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PHOENIX CITY COURT

Cit. No. #20029043568

Charge: 2) DUI/DRUGS/METABOLITE

DOB: 03/12/64

DOC: 10/03/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Sections 12-124(A).

This matter has been under advisement since the time of oral argument on August 30, 2004. This Court has considered and reviewed the record, select exhibits made of record and the Memoranda submitted.

Appellant was observed driving by a concerned citizen on October 13, 2002. As a result, the police came upon Appellant and arrested her and took her to the station. An investigation

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was conducted and a urine sample was obtained. Appellant was subsequently charged with Driving While Under the Influence of Intoxicating Liquor or Drug, in violation of A.R.S. § 28-1381(A)(1), and Driving or Being in Physical Control of a Vehicle while there was a Drug or Metabolite of a Drug in her system as defined in A.R.S. § 13-3401, in violation of A.R.S. § 28-1381(A)(3). On June 25, 2003, the case went to trial in the Phoenix Municipal Court before the Honorable Karyn Klausner. After Appellant's attorney made his opening statement, the court declared a mistrial, the jury was discharged and a new trial date was set for October 27, 2003. On July 2, 2003, Appellant filed a Motion to Quash all further proceedings. This Motion was denied. At trial, Appellant was found not guilty with respect to driving while under the influence of an intoxicating liquor or drug, but found guilty of having driven with a drug or metabolite of a drug in her system. Appellant has filed a timely Notice of Appeal in this case.

Appellant claims that her constitutional rights against double jeopardy have been violated where the trial court granted a mistrial in the first trial at Appellee's request and refused Appellant's request to quash all further proceedings. Appellee argues that Appellant has failed to include the entire record of all proceedings pertinent to Appellant's claim that the denial of Appellant's Motion to Quash should be reversed. Indeed, Appellant has failed to include within the record on appeal, any portion of the record that relates to the first trial proceedings. The law is well established in Arizona that an appellate court must presume that missing portions of the record support the decision made by the trial court.¹ Therefore Appellant's arguments that the trial judge erred in denying the Motion to Quash must fail, as Appellant has failed to include any portions of that record within the record on appeal in this case.

Moreover, it is a well established rule that great discretion is afforded to a trial court to determine when manifest necessity demands a mistrial.² The law dictates that a decision to grant a mistrial rests within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.³ When a mistrial is declared in a criminal proceeding because of manifest necessity, a defendant may be subjected to a retrial consistent with the Fifth Amendment, where for compelling reasons deemed by the trial court the ends of substantial justice cannot be attained otherwise.⁴ This court has received no transcript of the proceedings from the lower court when the mistrial was granted, and will presume that the trial court exercised sound discretion to determine that manifest necessity required a mistrial, as there is no information from which this court could conclude otherwise.

IT IS THEREFORE ORDERED affirming the findings of guilt and sentences imposed by the Phoenix Municipal Court.

¹ See *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1983); *State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); *Lewis v. Oliver*, 178 Ariz. 330, 873 P.2d 668 (App. 1993).

² *State v. Givens*, 161 Ariz. 278, 279, 778 P.2d 643, 644 (App. 1989).

³ *Id.* citing *State v. Adamson*, 136 Ariz. 250, 263, 665 P.2d 972, 985 (1983).

⁴ *Arizona v. Washington*, 434 U.S. 497, 505 (1978). See *State v. Givens*, 161 Ariz. 278, 279, 778 P.2d 643, 644 (App. 1989).

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IT IS FURTHER ORDERED remanding this matter back to the Phoenix Municipal Court for all further, if any, and future proceedings.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT